



**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 97**

**[EPA-HQ-OAR-2009-0491; FRL-9672-4]**

**RIN 2060-AR35**

**Revisions to Federal Implementation Plans to Reduce  
Interstate Transport of Fine Particulate Matter and Ozone**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action on revisions to the final Transport Rule (Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, published August 8, 2011). EPA is revising the 2012 and 2014 state budgets for Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina, and Texas, and revising the new unit set-asides for Arkansas, Louisiana, and Missouri. These revisions are

in addition to the revisions to the final Transport Rule published on February 21, 2012.

**DATES:** This final rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OAR-EPA-HQ-OAR-2009-0491. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed on the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742. This Docket Facility is open from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The

Docket telephone number is (929)566-1742, fax (202) 566-1741.

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document can be accessed through the EPA Website at:

<http://epa.gov/airmarkets>.

**SUPPLEMENTARY INFORMATION:**

**I. Glossary of Terms and Abbreviations**

The following are abbreviations of terms used in final  
rule:

CFR Code of Federal Regulations

EGU Electric Generating Unit

FIP Federal Implementation Plan

FR Federal Register

EPA U.S. Environmental Protection Agency

ICR Information Collection Request

NAAQS National Ambient Air Quality Standards

NODA Notice of Data Availability

NO<sub>x</sub> Nitrogen Oxides

SIP State Implementation Plan

OMB Office of Management and Budget

PM2.5 Fine Particulate Matter, Less Than 2.5 Micrometers

PM Particulate Matter

RIA Regulatory Impact Analysis

SO2 Sulfur Dioxide

TSD Technical Support Document

## **II. General Information**

### **A. Does this action apply to me?**

Regulated Entities. Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

| <b>Category</b> | <b>NAICS code</b> | <b>Examples of potentially regulated industries</b> |
|-----------------|-------------------|---|
| Industry        | 2211, 2212, 2213  | Electric service providers                          |

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization,

etc., is regulated by this action, you should carefully examine the applicability criteria in §§ 97.404, 97.504, and 97.604 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the transport rule Web site <http://www.epa.gov/airtransport>.

*C. How is this preamble organized?*

I. Glossary of Terms and Abbreviations

II. General Information

A. Does this action apply to me?

B. Where can I get a copy of this document and other related information?

C. How is the preamble organized?

III. Executive Summary

IV. Response to General Comments

V. Specific Revisions in this Final Action

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

B. Paperwork Reduction Act

C. Regulatory Flexibility Act (RFA)

D. Unfunded Mandates Reform Act

E. Executive Order 13132: Federalism

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks  
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use  
I. National Technology Transfer Advancement Act  
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations  
K. Congressional Review Act  
L. Judicial Review

### **III. Executive Summary**

In this action, EPA is revising specific aspects of the Transport Rule promulgated by EPA on July 6, 2011 (76 FR 48208, Aug. 2, 2011) (the July 6, 2011 final rule). Specifically, EPA is revising the 2012 and 2014 state budgets for Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina, and Texas, revising the new unit set-asides for Arkansas, Louisiana, and Missouri, and making associated changes to variability limits.<sup>1</sup> EPA originally proposed the Transport Rule on July 6, 2010, (75 FR 45210) and subsequently issued three related notices of data availability (NODAs). The first NODA, published on September 1, 2010, addressed updates to power sector

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<sup>1</sup> Throughout this preamble, EPA refers to a state budget for 2012 and 2013 as a "2012" state budget and refers to a state budget for 2014 and thereafter as a "2014" state budget. Therefore, any revision of a 2012 state budget would apply to the state budget for 2012 and 2013, and any revision of a 2014 state budget would apply to the state budget for 2014 and thereafter.

modeling and data (75 FR 53613). The second NODA, published on October 27, 2010, addressed updates to emissions inventory data (75 FR 66055). The third NODA, published on January 7, 2011, addressed the data basis for unit-level allowance allocation methodologies (76 FR 1109). EPA then finalized the Transport Rule on July 6, 2011 (76 FR 48208).

After the final Transport Rule was published, EPA identified discrepancies in certain data assumptions that affected the calculation of a few states' budgets and new unit set-asides in the July 6, 2011, final rule; as a result, on October 14, 2011, EPA published proposed revisions to Transport Rule state budgets in Florida, Louisiana, Michigan, Mississippi, Nebraska, New Jersey, New York, Texas, and Wisconsin, as well as new unit set-asides in Arkansas and Texas (76 FR 63860). In that October 14, 2011, proposal, EPA provided an additional opportunity for commenters to identify information, not previously made available to the agency, that might support similar revisions to Transport Rule state budgets or new unit set-asides in addition to those specifically identified in that proposal (76 FR 63868).

After reviewing comments received on the October 14, 2011 proposal, EPA published three actions on February 21,

2012. First, the Agency issued a final rule addressing the revisions specifically identified in the October 14, 2011, proposal (77 FR 10324). Second, the Agency issued a direct final rule that would have made a set of similar revisions on the basis of new information supplied by commenters responding to the October 14, 2011, proposal (77 FR 10342). Specifically, the direct final included revisions to the 2012 and 2014 state budgets for Arkansas, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, New York, Nebraska, Ohio, Oklahoma, South Carolina, and Texas, and revisions to the new unit set-asides for Arkansas, Louisiana, and Missouri. Third, EPA published a parallel proposal that proposed the adjustments made in the direct final rule. (77 FR 10350) EPA indicated that if it received adverse comment, it would withdraw the relevant portions of that rule and address all relevant comments received in any subsequent rule taking final action based on the parallel proposal.

EPA received adverse comment on the February 21, 2012, direct final rule and the parallel proposal, and thus has taken a separate action to withdraw the direct final rule May 16, 2012. (77 FR 28785). EPA has reviewed all of the comments received and is now taking final action on the revisions that were proposed in the February 21, 2012,



parallel proposal. See section IV of this preamble for a discussion of the Agency's response to general comments on this action. See section V of this preamble for a discussion of the specific revisions being made in this final rule as well as the corresponding Response to Comments document contained in the docket for this action.

Tables III-1 through III-6 below summarize the state budgets, new unit set-asides, Indian country new-unit set-asides, and variability limits for all states covered by the Transport Rule, reflecting all of the revisions finalized in this action as well as those revisions included in a previous final rule published on February 21, 2012 (77 FR 10324).

**Table III-1. 2012-2013 SO<sub>2</sub> Budgets, New Unit Set-Asides**

| State    | 2012-2013<br>Total<br>Budget | 2012<br>New<br>Unit<br>Set-<br>Aside | 2013<br>New<br>Unit<br>Set-<br>Aside | 2012-2013<br>Indian<br>Country New<br>Unit<br>Set-Aside |
|----------|------------------------------|--------------------------------------|--------------------------------------|---|
| Alabama  | 216,033                      | 4,321                                |                                      |   |
| Georgia  | 158,527                      | 3,171                                |                                      |   |
| Illinois | 234,889                      | 11,744                               |                                      |   |
| Indiana  | 290,762                      | 8,723                                |                                      |   |
| Iowa     | 107,085                      | 2,035                                |                                      | 107   |
| Kansas   | 41,980                       | 798                                  |                                      | 42  |
| Kentucky | 232,662                      | 13,960                               |                                      |   |
| Maryland |                              | 602                                  |                                      |   |

|                |         |        |       |     |
|----------------|---------|--------|-------|-----|
|                | 30,120  |        |       |     |
| Michigan       | 229,303 | 4,357  |       | 229 |
| Minnesota      | 41,981  | 798    |       | 42  |
| Missouri       | 207,466 | 4,149  | 6,224 |     |
| Nebraska       | 68,162  | 2,658  |       | 68  |
| New Jersey     | 7,670   | 153    |       |     |
| New York       | 36,296  | 690    |       | 36  |
| North Carolina | 136,881 | 10,813 |       | 137 |
| Ohio           | 315,393 | 6,308  |       |     |
| Pennsylvania   | 278,651 | 5,573  |       |     |
| South Carolina | 96,633  | 1,836  |       | 97  |
| Tennessee      | 148,150 | 2,963  |       |     |
| Texas          | 294,471 | 14,430 |       | 294 |
| Virginia       | 70,820  | 2,833  |       |     |
| West Virginia  | 146,174 | 10,232 |       |     |
| Wisconsin      | 79,480  | 3,099  |       | 80  |

**Table III-2. 2014 SO<sub>2</sub> Budgets, New Unit Set-Asides  
and Variability Limits**

| State    | 2014<br>Total<br>Budget | 2014<br>New Unit<br>Set-Aside | 2014<br>Indian<br>Country<br>New Unit<br>Set-Aside | 2014<br>Variability<br>Limit |
|----------|-------------------------|-------------------------------|--|------------------------------|
| Alabama  | 213,258                 | 4,265                         |  | 38,386                       |
| Georgia  | 135,565                 | 2,711                         |  | 24,402                       |
| Illinois | 124,123                 | 6,206                         |  | 22,342                       |
| Indiana  | 166,449                 | 4,993                         |  | 29,961                       |
| Iowa     | 75,184                  | 1,429                         | 75   | 13,533                       |
| Kansas   | 41,980                  | 798                           | 42   | 7,556                        |

|                |         |        |     |        |
|----------------|---------|--------|-----|--------|
| Kentucky       | 106,284 | 6,377  |     | 19,131 |
| Maryland       | 28,203  | 564    |     | 5,077  |
| Michigan       | 143,995 | 2,736  | 144 | 25,919 |
| Minnesota      | 41,981  | 798    | 42  | 7,557  |
| Missouri       | 165,941 | 4,978  |     | 29,869 |
| Nebraska       | 68,162  | 2,658  | 68  | 12,269 |
| New Jersey     | 5,574   | 111    |     | 1,003  |
| New York       | 27,556  | 523    | 28  | 4,960  |
| North Carolina | 57,620  | 4,552  | 58  | 10,372 |
| Ohio           | 142,240 | 2,845  |     | 25,603 |
| Pennsylvania   | 112,021 | 2,240  |     | 20,164 |
| South Carolina | 96,633  | 1,836  | 97  | 17,394 |
| Tennessee      | 58,833  | 1,177  |     | 10,590 |
| Texas          | 294,471 | 14,430 | 294 | 53,005 |
| Virginia       | 35,057  | 1,402  |     | 6,310  |
| West Virginia  | 75,668  | 5,297  |     | 13,620 |
| Wisconsin      | 47,883  | 1,867  | 48  | 8,619  |

**Table III-3. 2012-2013 Annual NO<sub>x</sub> Budgets, New Unit Set-Asides**

| State    | 2012-2013<br>Total<br>Budget | 2012<br>New Unit<br>Set-<br>Aside | 2013<br>New<br>Unit<br>Set-<br>Aside | 2012-2013<br>Indian Country<br>New Unit<br>Set-Aside |
|----------|------------------------------|-----------------------------------|--------------------------------------|--|
| Alabama  | 72,691                       | 1,454                             |                                      |  |
| Georgia  | 62,010                       | 1,240                             |                                      |  |
| Illinois | 47,872                       | 3,830                             |                                      |  |
| Indiana  | 109,726                      | 3,292                             |                                      |  |
| Iowa     |                              | 729                               |                                      | 38   |

|                |         |       |       |
|----------------|---------|-------|-------|
|                | 38,335  |       |       |
| Kansas         | 31,354  | 596   | 31    |
| Kentucky       | 85,086  | 3,403 |       |
| Maryland       | 16,633  | 333   |       |
| Michigan       | 65,421  | 1,243 | 65    |
| Minnesota      | 29,572  | 561   | 30    |
| Missouri       | 52,400  | 1,572 | 3,144 |
| Nebraska       | 30,039  | 1,772 | 30    |
| New Jersey     | 8,218   | 164   |       |
| New York       | 21,722  | 412   | 22    |
| North Carolina | 50,587  | 2,984 | 51    |
| Ohio           | 95,468  | 1,909 |       |
| Pennsylvania   | 119,986 | 2,400 |       |
| South Carolina | 32,498  | 617   | 33    |
| Tennessee      | 35,703  | 714   |       |
| Texas          | 137,701 | 5,370 | 138   |
| Virginia       | 33,242  | 1,662 |       |
| West Virginia  | 59,472  | 2,974 |       |
| Wisconsin      | 34,101  | 2,012 | 34    |

**Table III-4. 2014 Annual NO<sub>x</sub> Budgets, New Unit Set-Asides  
and Variability Limits**

| State    | 2014<br>Total<br>Budget | 2014<br>New Unit<br>Set-Aside | 2014<br>Indian<br>Country<br>New Unit<br>Set-Aside | 2014<br>Variability<br>Limit |
|----------|-------------------------|-------------------------------|--|------------------------------|
| Alabama  | 71,962                  | 1,439                         |  | 12,953                       |
| Georgia  | 53,738                  | 1,075                         |  | 9,673                        |
| Illinois | 47,872                  | 3,830                         |  | 8,617                        |

|                |         |       |     |        |
|----------------|---------|-------|-----|--------|
| Indiana        | 108,424 | 3,253 |     | 19,516 |
| Iowa           | 37,498  | 712   | 38  | 6,750  |
| Kansas         | 31,354  | 596   | 31  | 5,644  |
| Kentucky       | 77,238  | 3,090 |     | 13,903 |
| Maryland       | 16,574  | 331   |     | 2,983  |
| Michigan       | 63,040  | 1,198 | 63  | 11,347 |
| Minnesota      | 29,572  | 561   | 30  | 5,323  |
| Missouri       | 48,743  | 2,925 |     | 8,774  |
| Nebraska       | 30,039  | 1,772 | 30  | 5,407  |
| New Jersey     | 7,945   | 159   |     | 1,430  |
| New York       | 21,722  | 412   | 22  | 3,910  |
| North Carolina | 41,553  | 2,451 | 42  | 7,480  |
| Ohio           | 90,258  | 1,805 |     | 16,246 |
| Pennsylvania   | 119,194 | 2,384 |     | 21,455 |
| South Carolina | 32,498  | 617   | 33  | 5,850  |
| Tennessee      | 19,337  | 387   |     | 3,481  |
| Texas          | 137,701 | 5,370 | 138 | 24,786 |
| Virginia       | 33,242  | 1,662 |     | 5,984  |
| West Virginia  | 54,582  | 2,729 |     | 9,825  |
| Wisconsin      | 32,871  | 1,939 | 33  | 5,917  |

**Table III-5. 2012-2013 Ozone-Season NO<sub>x</sub> Budgets, New Unit Set-Asides**

| State | 2012<br>Total<br>Budget | 2013<br>Total<br>Budget | 2012<br>New Unit<br>Set-<br>Aside | 2013<br>New<br>Unit<br>Set-<br>Aside | 2012-<br>2013<br>Indian<br>Country<br>New Unit<br>Set-<br>Aside |
|-------|-------------------------|-------------------------|-----------------------------------|--------------------------------------|---|
|-------|-------------------------|-------------------------|-----------------------------------|--------------------------------------|---|

|                |        |        |       |       |    |
|----------------|--------|--------|-------|-------|----|
| Alabama        | 31,746 |        | 635   |       |    |
| Arkansas       | 15,110 |        | 756   |       |    |
| Florida        | 28,644 |        | 544   |       | 29 |
| Georgia        | 27,944 |        | 559   |       |    |
| Illinois       | 21,208 |        | 1,697 |       |    |
| Indiana        | 46,876 |        | 1,406 |       |    |
| Iowa           | 16,532 |        | 314   |       | 17 |
| Kentucky       | 36,167 |        | 1,447 |       |    |
| Louisiana      | 18,115 |        | 344   |       | 18 |
| Maryland       | 7,179  |        | 144   |       |    |
| Michigan       | 28,041 |        | 533   |       | 28 |
| Mississippi    | 12,429 |        | 237   |       | 12 |
| Missouri       | 22,788 |        | 684   | 1,367 |    |
| New Jersey     | 4,128  |        | 83    |       |    |
| New York       | 10,369 |        | 197   |       | 10 |
| North Carolina | 22,168 |        | 1,308 |       | 22 |
| Ohio           | 41,284 |        | 826   |       |    |
| Oklahoma       | 36,567 | 22,694 | 731   | 454   |    |
| Pennsylvania   | 52,201 |        | 1,044 |       |    |
| South Carolina | 13,909 |        | 264   |       | 14 |
| Tennessee      | 14,908 |        | 298   |       |    |
| Texas          | 65,560 |        | 2,556 |       | 66 |
| Virginia       | 14,452 |        | 723   |       |    |
| West Virginia  | 25,283 |        | 1,264 |       |    |
| Wisconsin      | 14,784 |        | 872   |       | 15 |

**Table III-6. 2014 Ozone-Season NO<sub>x</sub> Budgets, New Unit Set-Asides and Variability Limits**

| State    | 2014<br>Total<br>Budget | 2014<br>New Unit<br>Set-Aside | 2014<br>Indian<br>Country<br>New Unit<br>Set-Aside | 2014<br>Variability<br>Limit |
|----------|-------------------------|-------------------------------|--|------------------------------|
| Alabama  | 31,499                  | 630                           |  | 6,615                        |
| Arkansas |                         | 1,209                         |  | 3,173                        |

|                |        |       |    |        |
|----------------|--------|-------|----|--------|
|                | 15,110 |       |    |        |
| Florida        | 27,825 | 529   | 28 | 5,843  |
| Georgia        | 24,041 | 481   |    | 5,049  |
| Illinois       | 21,208 | 1,697 |    | 4,454  |
| Indiana        | 46,175 | 1,385 |    | 9,697  |
| Iowa           | 16,207 | 308   | 16 | 3,403  |
| Kentucky       | 32,674 | 1,307 |    | 6,862  |
| Louisiana      | 18,115 | 344   | 18 | 3,804  |
| Maryland       | 7,179  | 144   |    | 1,508  |
| Michigan       | 27,016 | 513   | 27 | 5,673  |
| Mississippi    | 12,429 | 237   | 12 | 2,610  |
| Missouri       | 21,099 | 1,266 |    | 4,431  |
| New Jersey     | 3,731  | 75    |    | 784    |
| New York       | 10,369 | 197   | 10 | 2,177  |
| North Carolina | 18,455 | 1,089 | 18 | 3,876  |
| Ohio           | 39,013 | 780   |    | 8,193  |
| Oklahoma       | 22,694 | 454   |    | 4,766  |
| Pennsylvania   | 51,912 | 1,038 |    | 10,902 |
| South Carolina | 13,909 | 264   | 14 | 2,921  |
| Tennessee      | 8,016  | 160   |    | 1,683  |
| Texas          | 65,560 | 2,556 | 66 | 13,768 |
| Virginia       | 14,452 | 723   |    | 3,035  |
| West Virginia  | 23,291 | 1,165 |    | 4,891  |
| Wisconsin      | 14,296 | 844   | 14 | 3,002  |

#### **IV. Response to General Comments**

EPA received several comments on the direct final rule and parallel proposal published on February 21, 2012. Many

commenters generally supported the proposed revisions to state budgets and new unit set-asides, and EPA received few comments addressing the manner in which the revisions were quantified.

Some commenters, while supporting the proposed revisions, asked that additional revisions be made. Most of these comments simply re-iterated, often verbatim, comments that were previously submitted and to which EPA had already responded. (See, EPA's Response to Comments document in the docket for this action.) Some of those comments asserted that EPA had failed to address specific unit level issues that commenters had previously raised, frequently in reference to unit level emission rates and fuel choices. EPA responded to all comments received on prior proposals in the context of those prior rulemakings. In some cases, EPA declined to make specific revisions requested by commenters. EPA's reasoned determination that it would not be appropriate to make certain requested revisions does not, as commenters appear to suggest, demonstrate that the EPA "failed to address" issues raised in prior comments.

For instance, a commenter responding to EPA's October 14, 2011 proposed revisions rule argued that the NOX emission rate in the IPM "TR\_Remedies" run was erroneously low for several units in Florida, including Crist Units 4



and 5, Smith Unit 1, and Scholz Units 1 and 2. The commenters argued that the rates in IPM should have reflected the units' historic emission rates and should not have reflected the installation of low-NOX burners (LNBs). EPA evaluated these comments and determined that the correct rate was used in the TR remedy run. EPA explained its rationale for disagreeing with the comment in the Response to Comment document. As the Agency explained, "[t]he controlled NOX base rate modeled for these units is very consistent with the emission rates reported by the units themselves. However, the controlled NOX policy rate for these units is adjusted downward as a result of combustion control (e.g., LNB) upgrades or installation that would be considered economic at the cost thresholds modeled in the remedy scenario. The rates modeled are reflective of what other similarly-configured units are achieving when installing such controls. Therefore, the rates modeled are derived, but different, from the historic rates observed at the units as noted by commenter. However, the change is not accidental (as assumed by commenter) but intentional and explained in section VII of the final Transport Rule preamble and the IPM v.4.10

documentation.”<sup>2</sup> In this case, EPA did indeed address the comment, and its determination that the requested budget adjustment was not appropriate does not imply that it “failed to address” an issue.

A brief summary of selected general comments received on the February 21, 2012, direct final/parallel proposal notices follows. Responses to comments on specific proposed revisions are addressed in section V, which describes in greater detail the specific revisions finalized in this action. Additional and more detailed responses appear in the response to comments document in the docket for this rulemaking.

#### 1. General Comments on Rulemaking Procedures

Comment: One commenter suggests that, before finalizing this rule, EPA should prepare a “comprehensive proposal that includes the information provided in the Direct Final Rule, the Final Revisions Rule, the Supplemental Rule, and the three NODAs.”

Response: EPA does not agree that an additional proposal is needed in these circumstances. EPA published

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<sup>2</sup> Response to Comments on the Proposed Revisions to FIPs to Reduce Interstate Transport of Fine PM and Ozone (EPA-HQ-OAR-2009-0491-4963, page 83).

the direct final rule and parallel proposal on February 21, 2012. That notice explicitly laid out for public comment all of the actions EPA is taking in this final action. EPA provided ample opportunity for comment on those revisions, received public comment on the notices, and in accordance with proper rulemaking procedure is now taking this final action. The commenter has not identified any specific criteria in the Administrative Procedures Act or the Clean Air Act with which it believes EPA did not adhere.

Further, in this action, EPA is only making targeted specific revisions to state budgets and new unit set asides. EPA neither proposed, nor reopened for comment, any aspect of the applicability provisions in the final Transport Rule or any the methodologies established in that rule including those used to quantify each individual state's significant contribution to nonattainment and interference with maintenance, to develop state budgets, and to allocate allowances to individual units.

## 2. Comment Regarding Air Quality Modeling

Comment: A commenter suggested that EPA should redo air quality modeling in light of the revisions.

Response: EPA conducted quantitative air quality assessments regarding the full suite of revisions contained in the actions EPA published on February 21, 2012

(including the revisions in that date's final rule as well as that date's direct final rule and parallel proposal), with the intent of determining whether any of the unit-level discrepancies addressed by those revisions would have affected the basis (informed by air quality modeling) of decisions EPA made in the promulgation of the final Transport Rule. That analysis evaluated the relationship between all of the revisions EPA has considered and the original air quality analysis conducted for the July 6, 2011, final Transport Rule that informed that Rule's determination of emissions that significantly contribute to nonattainment or interfere with maintenance of the National Ambient Air Quality Standards (NAAQS) in downwind states.<sup>3</sup> This analysis found that the revisions would lead to only minor changes in estimated air quality concentrations at the receptors to which the states in this rule were "linked" in the final Transport Rule (76 FR 48236; see section V.D in the preamble to the final Transport Rule for

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<sup>3</sup> See, "Final Revisions Rule Significant Contribution Assessment TSD" (EPA-HQ-OAR-2009-0491-4956) where this relationship is evaluated by comparing Tables 37, 38, 39, and 40 (inclusive of the revisions contained in the February 21, 2012 final rule (77 FR 10324) as well as the revisions contained in this action) with the columns "Without" budget increases in Tables 2, 3, 4, and 5. See also, "Final June Revisions Rule Significant Contribution Assessment TSD," Tables 2, 3, 4, and 5.

an explanation of how upwind states are linked to specific downwind receptors at issue in the Transport Rule).

These findings confirmed that the revisions at issue in this action as well as the revisions in the February 21, 2012, final rule (77 FR 10324) have only a limited air quality impact that would not have changed EPA's determination of the appropriate cost thresholds with which EPA quantified significant contribution or interference with maintenance under the final Transport Rule. EPA's analysis shows that SO<sub>2</sub> emission increases related to state budget increases in this action would not substantially affect the air quality component of the multifactor test and thus would not affect EPA's conclusions in the final Transport Rule identifying \$2,300/ton and \$500/ton as the appropriate SO<sub>2</sub> cost thresholds for "Group 1" and "Group 2" states, respectively, and would not change each state's designation as either "Group 1" or "Group 2" as was made in the final Transport Rule. For more detail regarding this analysis, please see section B of the "Final June Revisions Rule Significant Contribution Assessment TSD" in the docket for this rulemaking.

The results of this analysis also show that the increases in annual and ozone-season NO<sub>x</sub> related to this action's revisions represent a small percentage of each

state's total emissions. Therefore, EPA believes that the impact of these revisions would be limited to comparatively small changes to the 2014 ozone design values projected in the final Transport Rule air quality analysis. As a result, EPA does not find any basis on which this action's revisions, and the underlying data supporting those revisions, would substantively impact the air quality modeling previously conducted in support of the final Transport Rule.

### 3. Comments Regarding Power-Sector Modeling to Quantify State Budgets

Comment: Some commenters suggested that the information underlying the proposed revisions would require EPA to re-execute full power sector modeling using the Integrated Planning Model (IPM) to determine state budgets.

Response: EPA previously responded to comments on this topic on page 18-19 of the "Response to Comments on the Proposed Revisions to FIPs to Reduce Interstate Transport of Fine PM and Ozone." (EPA-HQ-OAR-2009-0491-4963) The state budgets are defined as the emissions projected to remain, in an average year, after all emissions that significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS in a downwind state are eliminated (76 FR 48246). In developing the Transport

Rule, EPA relied on sophisticated air quality analysis and power sector modeling in order to determine the appropriate cost per ton thresholds at which emission reductions relevant to significant contribution and interference with maintenance could be identified (based on the "multifactor test" described in the July 6, 2011, final Transport Rule). This approach was broad enough to necessitate a simultaneous examination of emissions across thousands of EGUs at multiple cost per ton levels, which EPA determined was best simulated with the assistance of IPM modeling. (See, "Final June Revisions Rule Significant Contribution Assessment TSD" and "Final June Revisions Rule State Budgets TSD" in the docket for this rulemaking).

In contrast, this action considers small adjustments to the quantification of remaining emissions at a discrete and limited subset of individual EGUs. While IPM is a powerful tool and EPA uses its output information when determining state budgets, that does not preclude EPA from making targeted adjustments to the IPM output that are consistent with the overall methodology. For example, some of the revisions were made due to non-economic factors that affect near-term unit-level electricity dispatch in certain specific circumstances. In those narrow cases, it is appropriate to adjust the output of an economic model like

IPM to reflect these factors, as demonstrated in this rule's "Final June Revisions Rule State Budgets and New Unit Set-Asides TSD" quantifying these out-of-merit-order dispatch adjustments, found in the docket for this rulemaking. As a result, EPA does not find it necessary to re-execute full power sector modeling in order to quantify the revisions to state budgets addressing the unit-level discrepancies the Agency identified in the final Transport Rule analysis as the basis for this rulemaking.

#### 4. Comments Regarding Budget Adjustments Based on Control Installation Timing

Comment: One commenter argued that the Wisconsin state SO<sub>2</sub> and NO<sub>x</sub> budgets should be increased to account for the scheduling of the installation of controls. The commenter notes that EPA proposed making such an adjustment for controls in Georgia and believes the Wisconsin situation is similar.

Response: EPA has previously responded to these comments (see Response to Comments on the Proposed Revisions to FIPs to Reduce Interstate Transport of Fine PM and Ozone; EPA-HQ-OAR-2009-0491-4963). Moreover, the commenter errs in asserting that the adjustments it requests are similar to the adjustments made to the Georgia budget. First, the commenter overlooks the fact that



Georgia is a Group 2 state while Wisconsin is a Group 1 state. EPA determined in the final Transport Rule that implementation of all controls available at \$500/ton would resolve the significant contribution and interference with maintenance of Group 2 states. For Group 1 states, however, significant contribution and interference with maintenance is not resolved unless controls available at \$2300/ton are implemented. EPA acknowledges that, absent an independent non Transport Rule related requirement, no additional scrubbers will be installed in Group 2 states (76 FR 48257, 48282). For this same reason, EPA determined that it could not assume that planned scrubber installations would be expedited in Group 2 states. This conclusion does not hold true for units in Group 1 states, where the \$2300/cost threshold may be sufficient to incentivize both new scrubbers and the expedited installation of planned scrubbers.

Second, in the case of Georgia, the controls would not be operating until the following year (i.e. 2015 instead of 2014). The commenter acknowledges that this is not the case in Wisconsin as the controls will operate in 2014, just potentially not at the beginning of the year. The commenter's suggestion that EPA should assume the controls will not operate at all in 2014 contradicts their own

acknowledgement that these controls will be operating most of the year; furthermore, even if the controls are not installed in time to operate at the very beginning of the year, the plant will not be emitting, or emitting at low levels, due to outages necessary for final tie-in. Additionally, the flexibility of trading mechanisms of the Transport Rule allows plants to accommodate this type of control installation schedule without disrupting the state's ability to meet its budget and assurance level. For these reasons, the requested revisions to the Wisconsin budget are not comparable to the revisions made to state budgets in Georgia .

#### 5. Petitions for Reconsideration

EPA received a number of Petitions, pursuant to section 307(d)(7)(B) of the Clean Air Act, for Reconsideration of the Transport Rule. By providing, in this rulemaking, an additional opportunity for comment on aspects of Transport Rule state budgets, EPA has addressed some of the issues and concerns raised in many of the petitions for administrative reconsideration. While EPA is not, in this final action, taking action to grant or deny any such petitions, EPA believes this action may make moot some of the issues raised in those petitions. EPA will take separate action to grant or deny reconsideration on issues

raised in the petitions to the extent they have not become moot.

## **V. Specific Revisions in this Final Action**

In this rule, EPA is taking final action to revise the Transport Rule and the Transport Rule FIPs. EPA has determined after considering all comments received during the comment period that it is appropriate to finalize the revisions as proposed. This section describes the specific revisions made in this rule. Additional information regarding the calculations done by EPA to quantify the appropriate changes to state budgets and new unit set asides can be found in the "Final June Revisions Rule State Budgets and New Unit Set-Asides TSD." Quantitative assessments of the relationship between final revisions to the Transport Rule and the original analysis can be found in the "Final June Revisions Rule Significant Contribution Assessment TSD." Unit-level allocations under the revised FIPs appear in a document entitled "Final June Revisions Rule Unit-Level Allocations under the FIPs." All of these documents, and additional relevant information including a detailed response to additional comments received during the comment period are in the docket for this rulemaking.

- (1) Revise the Arkansas ozone season NO<sub>x</sub> budgets for 2012 and 2014 and increase the Arkansas ozone season new unit set-aside budget.

In this final action, EPA is increasing the Arkansas 2012 and 2014 ozone-season NO<sub>x</sub> budgets by 73 tons. EPA is also increasing the ozone-season NO<sub>x</sub> new unit set-aside for Arkansas for 2014 and beyond. The revised ozone new unit set-aside is 8 percent of the ozone-season NO<sub>x</sub> budget.

EPA evaluated comments received in response to the October 14, 2011, proposed revisions, and determined that the McClellan plant is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation.<sup>4</sup> EPA therefore recalculated the emissions from the McClellan plant with non-economic generation to account for the input assumption changes. These calculations yield increases to the Arkansas 2012 and 2014 state budgets for ozone-season NO<sub>x</sub> of 73 tons.

EPA received comments on the October 14, 2011 revisions proposal that identified Turk Unit 1 as a unit

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<sup>4</sup> For purposes of this rule and the February 21, 2012, revisions rule, EPA characterizes an out-of-merit-order dispatch area as one in which "units... are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area." See 76 FR 63865.

commencing commercial operation on or after January 1, 2010. EPA evaluated these comments and determined that Turk Unit 1 qualifies as a new unit under the final Transport Rule's unit-level allocation methodology (see 76 FR 48290 for a description of that allocation methodology). The final Transport Rule did not include this unit's projected emissions in the calculation of Arkansas' ozone-season NO<sub>x</sub> new unit set-aside. EPA is therefore revising the portion of the Arkansas ozone-season budget dedicated to the state's new unit set-aside account so that it takes into account this unit's projected emissions, consistent with the new unit set-aside methodology in the final Transport Rule. EPA is applying this revision to the new unit set-asides for 2014 and beyond. 2014 is the first year for which EPA has not yet recorded (i.e., distributed) allowances to existing units under the Arkansas state budget. To implement this revision for 2012 and 2013, EPA would have to take back allocations of 2012 and 2013 allowances that the Agency has already distributed to existing units in Arkansas.<sup>5</sup> EPA received a comment

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<sup>5</sup> Because the total number of allowances available to all sources in a given state is limited to that state's budget, adjusting the size of the new unit set-aside necessarily changes the size of the total allowance pool that is distributed as initial allocations to existing units.

suggesting that the revision to the 2012 and 2013 new unit set-asides could be made because the stay meant "these allocations are no longer distributed for use until the stay is lifted." The premise of this comment is incorrect. Allowances for 2012 and 2013 were recorded in the compliance accounts of existing sources in Arkansas prior to the December 30, 2011, stay of the Transport Rule. Transport Rule allowance allocations recorded prior to December 30, 2011 remain in circulation in the marketplace. These allowances are electronically transferable by the owners and operators of such sources, and therefore those allowances may no longer reside in the specific compliance accounts in which they were originally recorded. Further, allowances still in their original recorded accounts may already be under contract to be transferred at a later date to another entity.<sup>6</sup> The commenter's assertion that "these allocations are no longer distributed for use" is thus not accurate. While sources are not required to hold allowances for compliance at this time, the previously allocated allowances remain in circulation and may have already been traded. Turk Unit 1 remains eligible to

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<sup>6</sup> EPA does not collect information on when and how allowance trades are executed in private contracts; instead, EPA's data only shows the physical location of allowances in accounts at a given point in time.

request allowance allocation from the new unit set-asides for any control period under the program. In the final Transport Rule, EPA established a minimum amount of allowances (equivalent to 2 percent of the relevant state budget) to be supplied to each new unit set-aside in addition to any other allowances supplied to that set-aside on the basis of projected emissions from specific new units EPA identified at the time. As such, the new unit set-asides can accommodate allocation requests from new units that were not explicitly identified at the time EPA promulgated the Transport Rule. (76 FR 48291) Further, as the commenter acknowledges, this unit is not projected to start-up until late 2012 and thus the unit will have little if any ozone-season emissions in 2012. It is likely that this unit will not need to hold 2012 ozone-season allowances for compliance. Finally, EPA notes that Turk Unit 1's compliance possibilities are not limited to its initial allowance allocation; like any other unit, it may obtain other allowances as necessary in the marketplace.

This revision yields an ozone-season NO<sub>x</sub> new unit set-aside of 8 percent for 2014 and beyond for Arkansas. See the "Final June Revisions Rule State Budgets and New Unit Set-Asides TSD" in the docket for this rulemaking for a quantitative demonstration of these revisions.

These revisions to the Arkansas new unit set-aside result in changes to allowance allocations to existing units, but they do not change the state's overall budget. See ``Final June Revisions Rule Unit-Level Allocations under the FIPs`` in the docket to this rulemaking.

- (2) Revise the Georgia SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> budgets for 2014.

In this final action, EPA is increasing the Georgia 2014 SO<sub>2</sub> budget by 40,334 tons, the Georgia 2014 annual NO<sub>x</sub> budget by 13,198 tons and the Georgia 2014 ozone-season NO<sub>x</sub> budget by 5,762 tons.

EPA received comments on the October 14, 2011, revisions proposal indicating that EPA erroneously assumed certain pollution control requirements would be in place by 2014 due to requirements in a Georgia state rule. Other commenters with sources in Group 1 states (i.e., Virginia, West Virginia, Ohio, Wisconsin) suggested that similar timing issues existed for their units. However, in these particular states the 2014 scrubber installations were predicted due to the economic incentives facing Group 1 states at the higher cost threshold (\$2,300 per ton) derived from EPA's multi-factor analysis. EPA's modeling projects that units in those states would find it cost-effective to install and operate new scrubbers in 2014 to



support Transport Rule emission reductions regardless of other pollution control incentives or requirements that may be on a different schedule. Georgia faces a lower cost threshold (\$500 per ton) as a Group 2 state, and while EPA believes that such a cost threshold is sufficient to induce the operation of existing scrubbers, EPA is not assuming that these units in Georgia would install new scrubbers by 2014 purely in response to the cost threshold applied to their state under the Transport Rule.

EPA evaluated the Georgia-specific comments on this issue and determined that the deadlines for certain units extend beyond 2014 in the Georgia state law in question. EPA also determined that, because Georgia is a Group 2 SO<sub>2</sub> state, it could not demonstrate that these controls would be installed absent the Georgia state law or in advance of the deadlines established therein. To correct the alignment of the Georgia 2014 state budgets with the requirements for affected units in Georgia to install controls by the state rule's deadlines, EPA is increasing Georgia's 2014 state budgets by 40,334 tons of SO<sub>2</sub>, 13,198 tons of annual NO<sub>x</sub>, and 5,762 tons of ozone-season NO<sub>x</sub>.

(3) Revise the Indiana SO<sub>2</sub> budgets for 2012 and 2014.

In this final action, EPA is increasing the Indiana SO<sub>2</sub> budget for 2012 and 2014 by 5,338 tons.

EPA evaluated comments received in response to the October 14, 2011, proposed revisions regarding post-combustion control status at Gallagher Units 2 and 4. Commenters identified an erroneous assumption of flue gas desulphurization (FGD, or scrubber) with 86 percent removal at units that have actually installed dry sorbent injection (DSI) technology with a 60 percent removal rate and an emission rate limit of 0.8 lbs/mmBtu established in a NSR settlement agreement. EPA evaluated the comments and determined that an adjustment was appropriate as it is supported by their data reported in EIA form 860 data and the legal requirements under Consent Decree of the Gallagher Plant. Therefore, EPA increased the state's annual SO<sub>2</sub> budget by 3,465 tons.

Commenters on the October 14, 2011, revisions proposal also identified a facility in Indiana, Gibson Unit 5, which currently faces immediate-term limitations regarding the amount of flue gas that can be treated in its existing FGD. Commenters noted its removal rate should be lower than that assumed by EPA. EPA examined the basis for its assumed removal rate - the design capability reported for the unit in EIA form 860. The Gibson Unit 5 reports in form EIA 860 that it can only pass 98% of its flue gas through its scrubber, not 100% as originally assumed by EPA. EPA

modified the unit's removal rate assumed in IPM to be consistent with its reported design capability and revised the budget accordingly.

In the final Transport Rule analysis, EPA relied on the SO<sub>2</sub> removal efficiency that this facility reported at its scrubber to the Energy Information Administration (EIA). However, EPA has since determined that this reported value only intended to address the removal efficiency for the portion of the flue gas treated in the scrubber.

EPA received comments supporting the revised assumption regarding the portion of the flue gas treated in the scrubber, and comments opposing EPA's use of the removal efficiency rate (95%) reported on EIA form 860. The commenter argues that EPA should instead use a lower removal efficiency rate (85%). While this removal efficiency rate is not a rate that was reported to EIA, the commenter argues that this rate is closer to the unit's removal values reported in EIA form 923.

After evaluating comments on this topic, EPA determined that its use of the 95% rate reported on EIA form 860 is appropriate. First, EPA relied on EIA form 860 as its default assumption for scrubber removal efficiency as it represents a consistent, conservative, and accurate

metric (reported by the sources themselves). As explained in the Final Transport Rule Response to Comments, "EPA notes that where EIA 860 reported values conflicted with those provided in comments, EPA generally relied on the EIA 860 reported values to promote consistent treatment of removal efficiencies among scrubbed units." Among other things, there can be inconsistency in the suggested removal rates provided to EPA by commenters. For example, at proposal, two different utilities that were co-owners of the same unit commented separately and provided a suggested removal rate for the same unit that they co-owned. However, the rate each suggested was different (EPA-HQ-OAR-2009-0491-2689.1, EPA-HQ-OAR-2009-0491-2665.1). For all of the above reasons, EPA remains confident that the consistent use of EIA 860 data is appropriate.

Second, the commenter's observation that its comment-supplied removal rate more closely parallels that reported in EIA 923 misunderstands the parameter being addressed in the IPM modeling and misconstrues the purpose for which EPA conducted IPM modeling in support of the Transport Rule. EPA applied its IPM modeling to develop accurate and reasonable state-level emission projections, for which it was necessary to develop a consistent approach and data source regarding the emission reduction capability of all

scrubbers throughout the fleet. The removal rate input parameter that EPA uses in its power sector modeling addresses scrubber capability, not a particular scrubber's performance in any given year. The removal rate reported on EIA form 923 only reflects performance of the scrubber in a particular year, which can be significantly affected by variable operational decisions at the unit; conversely, the removal rate reported on EIA form 860 reflects design capability of the scrubber - that is, what the supplier built it to regularly accomplish when at full operation. While the commenter argues that this particular scrubber has performed under its design value, there is also evidence that other scrubbers have performed above their design values. For example, comparing the scrubber removal efficiencies reported on EIA 923 to the corresponding design values reported in EIA 860 shows that three out of the four units at the Petersburg plant exceeded their design values in 2010. Evidently, individual scrubber efficiency in any given year may vary above or below that scrubber's design value; however, EPA does not find that any one instance of this type of variation, such as that reported by Gibson Unit 5, provides a sufficient basis for revising the projected *state-level* emissions on which the quantification of the state budget depends.

Because of the conservative nature of design values (representing broadly reliable and sustainable performance expectations) and the consistency with which they are reported from year to year on EIA form 860 (contrary to reported values on EIA form 923 that vary significantly from year to year), EPA determined that the design value data provided on EIA form 860 provide, in the aggregate, a more reliable metric for estimating the performance capability of a state's scrubbed fleet and thus result in reasonable and accurate state-level emission projections. For these reasons, EPA believes it is appropriate to use the scrubber removal efficiency reported on EIA form 860 for units modeled in IPM - including Gibson 5.

EPA recalculated the projected emissions for this unit using the most recent data reported by this facility to EIA on form 860 for 2009, which includes the scrubber's removal efficiency and the portion of flue gas treated. Based on this recalculation, EPA is increasing Indiana's 2012 and 2014 SO<sub>2</sub> budgets by 1,873 tons (5,338 tons total).

- (4) Revise the Kansas SO<sub>2</sub> and annual NO<sub>x</sub> budgets for 2012 and 2014.

In this final rule, EPA is increasing the Kansas 2012 and 2014 SO<sub>2</sub> budgets by 452 tons, as well as increasing the

2012 annual NO<sub>x</sub> budget by 640 tons and the 2014 annual NO<sub>x</sub> budget by 5,794 tons.

Commenters on the October 14, 2011, revisions proposal provided information showing that one unit at the Quindaro plant in Kansas is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation. EPA evaluated these comments and determined that, based on the new information submitted, there were immediate-term local conditions that would likely necessitate non-economic generation at these units. EPA therefore recalculated the emissions from this plant with non-economic generation to account for the input assumption changes. These calculations yield increases to the Kansas 2012 and 2014 state budgets for annual SO<sub>2</sub> of 452 tons and annual NO<sub>x</sub> of 640 tons.

Commenters on the October 14, 2011, revisions proposal also noted that EPA inadvertently included an emission rate requirement from a consent decree affecting a Kansas facility whose deadline actually extends beyond 2014. EPA evaluated the comment and determined that a revision was warranted because it could not establish that this emission rate limit would be met absent the consent decree or before the consent decree deadline. In particular, EPA determined that, because Kansas is a Group 2 SO<sub>2</sub> state, EPA could not

demonstrate that these controls would be installed absent the consent decree or in advance of the deadlines established therein. To correct the alignment of the Kansas 2014 state budget with the requirements for affected units in Kansas to meet the emission rate limitation by the consent decree's deadlines, EPA is increasing the Kansas 2014 annual NO<sub>x</sub> budget by an additional 5,154 tons (5,794 tons total).

- (5) Revise the Louisiana ozone season NO<sub>x</sub> budgets for 2012 and 2014 and adjust the ozone season new unit set-aside.

In this final action, EPA is increasing the Louisiana 2012 and 2014 ozone-season NO<sub>x</sub> budgets by 89 tons. EPA is also decreasing the ozone-season NO<sub>x</sub> new unit set-aside for 2012 and 2014. The revised new unit set-aside is 2 percent of the ozone-season budget.

EPA received comments on the October 14, 2011, proposed revisions rule demonstrating that the Stall and Lieberman plants are in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation. EPA evaluated the comments and determined that immediate-term local conditions would likely necessitate non-economic generation at these units. EPA recalculated the emissions from the Stall and Lieberman



plants with non-economic generation to account for the input assumption changes. These calculations yield increases to Louisiana's 2012 and 2014 state budgets for ozone-season NO<sub>x</sub> of 89 tons.

Comments on the October 14, 2011, revisions proposal also noted that in calculating the Louisiana ozone-season NO<sub>x</sub> new unit set-aside, EPA included projected emissions from a planned new facility, Washington Parish, which will not in fact come into service in Louisiana. EPA determined that Washington Parish's projected emissions should be subtracted from Louisiana's new unit set-aside calculations. EPA is therefore reducing the size of Louisiana's ozone-season NO<sub>x</sub> new unit set-aside in 2012 and 2014 to 2 percent (from the previous 3 percent) to account for the exclusion of these projected emissions from the relevant calculation. This revision means that fewer allowances will need to be held in reserve for the new unit set-aside. After this revision's effective date, EPA will reallocate any allowances in excess of the revised new unit set-aside to existing units in the state by the same existing unit allowance allocation methodology as previously finalized. See the "Final June Revisions Rule State Budgets and New Unit Set-Asides TSD" in the docket

for this rulemaking for a quantitative demonstration of these revisions.

These revisions to the Louisiana new unit set-aside result in changes to allowance allocations to existing units, but they do not change the state's overall budget. See "Final June Revisions Rule Unit-Level Allocations under the FIPs" in the docket to this rulemaking.

(6) Revise the Mississippi ozone season NO<sub>x</sub> budgets for 2012 and 2014.

In this final action, EPA is increasing both the Mississippi 2012 and 2014 ozone-season NO<sub>x</sub> budgets by 115 tons.

EPA received comments on the October 14, 2011, revisions proposal demonstrating that the Moselle plant is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation. EPA has determined that there were immediate-term local conditions that would likely necessitate non-economic generation at these units.

Therefore, EPA recalculated the emissions from the Moselle plant with non-economic generation to account for the input assumption changes. These calculations yield increases to Mississippi's 2012 and 2014 state budgets for ozone-season NO<sub>x</sub> of 115 tons.

- (7) Revise the Missouri annual and ozone season NO<sub>x</sub> budgets for 2012 and 2014 and revise the SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> new unit set-aside budgets.

In this final action, EPA is increasing the Missouri 2012 and 2014 annual and ozone-season NO<sub>x</sub> budgets by 26 tons and increasing the size of the SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> new unit set-aside budgets. The revised set-aside budgets are 3 percent of the SO<sub>2</sub> budget and 6 percent of the annual and ozone-season NO<sub>x</sub> budgets.

EPA is increasing these budgets to account for operational constraints at six plants that were identified in comments received on the October 14, 2011, revisions proposal. Commenters provided information showing that these units were in out-of-merit-order dispatch areas with conditions likely to necessitate what would otherwise be non-economic generation. EPA evaluated these comments and determined that there were immediate-term local conditions that would likely necessitate non-economic generation at these units.

EPA recalculated the emissions from these six plants with non-economic generation to account for the input assumption changes. These calculations yield increases to

Missouri's 2012 and 2014 state budgets for annual NO<sub>x</sub> of 26 tons and ozone-season NO<sub>x</sub> of 26 tons.

Comments on the October 14, 2011, revisions proposal also identified Iatan Unit 2 as commencing commercial operation on or after January 1, 2010. EPA reviewed these comments and determined that Iatan Unit 2 qualifies as a new unit under the final Transport Rule's unit-level allocation methodology (76 FR 48290). The final Transport Rule omitted this unit's projected emissions from the calculation of Missouri's new unit set-asides. EPA is therefore revising the portion of Missouri's SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone-season NO<sub>x</sub> budgets dedicated to the state's new unit set-asides so that they take into account this unit's projected emissions, consistent with the new unit set-aside methodology in the final Transport Rule. EPA is only applying this revision for 2013 and beyond, the first year for which EPA has not yet recorded (i.e., distributed) allowances to existing units under the Missouri state budget. In this manner, EPA will avoid any retroactive adjustments to allowance allocations that the Agency has already distributed to existing units in Missouri for Transport Rule compliance in the 2012 and 2013 control

periods.<sup>7</sup> Allowances for 2012 were recorded in the compliance accounts of existing sources in Missouri prior to the December 30, 2011, stay of the Transport Rule. Transport rule allowance allocations recorded prior to the December 30, 2011 stay are electronically transferable by the owners and operators of such sources, and because they are transferable, those allowances may no longer reside in the compliance accounts in which they were originally recorded. Iatan Unit 2 remains eligible to request allowance allocation from the new unit set-asides for any control period under the program. This revision yields an ozone-season NO<sub>x</sub> new unit set-aside of 6 percent, an annual NO<sub>x</sub> new unit set-aside of 6 percent, and an SO<sub>2</sub> new unit set-aside of 3 percent for 2013 and beyond for Missouri. See the "Final June Revisions Rule State Budgets and New Unit Set-Asides TSD" in the docket for this rulemaking for a quantitative demonstration of these revisions.

These revisions to the Missouri new unit set-aside result in changes to allowance allocations to existing units, but they do not change the state's overall budget.

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<sup>7</sup> Because the total number of allowances available to all sources in a given state is limited to that state's budget, adjusting the size of the new unit set-aside necessarily changes the size of the total allowance pool that is distributed as initial allocations to existing units.

See "Final June Revisions Rule Unit-Level Allocations under the FIPs" in the docket to this rulemaking.

- (8) Revise the Ohio SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> budgets for 2012 and 2014.

In this final action, EPA is increasing Ohio's 2012 and 2014 annual SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone-season NO<sub>x</sub> by 5,163, 2,765, and 1,221 tons respectively.

EPA is finalizing budget increases in this action account for operational constraints at two plants, Conesville and Muskingum River, that were identified in comments received on the October 14, 2011, revisions proposal. The commenter provided information showing that these plants were in out-of-merit-order dispatch areas with conditions likely to necessitate what would otherwise be non-economic generation. EPA determined there were immediate-term local conditions that would likely necessitate non-economic generation at these units.

EPA recalculated the emissions from these two plants with non-economic generation to reflect the input assumption changes. These calculations yield increases to Ohio's 2012 and 2014 state budgets for annual SO<sub>2</sub> of 5,163 tons, annual NO<sub>x</sub> of 547 tons, and ozone-season NO<sub>x</sub> of 257 tons.

EPA is finalizing additional adjustments to Ohio's 2012 and 2014 annual and ozone-season NO<sub>x</sub> budgets to correct an erroneous assumption of an SCR at Bayshore 4. EPA received comments on the October 14, 2011, revisions proposal arguing that EPA's assumption regarding SCR at the unit was incorrect. EPA reviewed recent emissions data and verified that there is no SCR currently at the facility, and that there is no evidence contradicting the commenter's recent claims that no SCR is planned or under construction. Therefore, removing the SCR assumption results in an additional 2,218 ton increase (2,765 ton total) in the state's annual NO<sub>x</sub> budget and a 964 ton increase (1,221 ton total) for the ozone-season NO<sub>x</sub> budget.

(9) Revise the Nebraska SO<sub>2</sub> budgets for 2012 and 2014.

EPA is finalizing revisions to increase the Nebraska 2012 and 2014 SO<sub>2</sub> budgets by 3,110 tons.

EPA received comments on the October 14, 2011 revisions proposal arguing that EPA's assumptions regarding FGD pollution control technology at Whelan Energy Center Units 1 and 2 and Nebraska City Unit 2 were incorrect. The commenter noted that the technology at Nebraska Unit 2 and Whelan Unit 2 is dry FGD technology, whereas EPA had assumed wet FGD technology with a higher SO<sub>2</sub> removal efficiency than the actual dry FGD technology that those

units achieve. EPA evaluated these comments and determined that this difference in control type warranted a change in the relevant budgets. Additionally, EPA is also revising its assumption of FGD technology at Whelan Energy Center Unit 1, as EPA determined that there is no FGD present, planned, or under construction at the unit. These adjustments result in an increase of 3,110 tons to the 2012 and 2014 annual SO<sub>2</sub> budgets for the state.

(10) Revise the New York SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone season NO<sub>x</sub> budgets for 2012 and 2014.

In this final action, EPA is increasing New York's 2012 and 2014 annual SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone-season NO<sub>x</sub> budgets by 5,444 tons, 694 tons, and 127 tons respectively.

EPA received comments on the October 14, 2011, revisions proposal demonstrating that the East River plant is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation. EPA determined that based on this information, the East River plant's near-term operations are likely to yield increased emissions beyond those accounted for in the final Transport Rule's quantification of the relevant state budgets. EPA recalculated the emissions from this facility with out-of-merit-order dispatch to reflect the input assumption changes. These calculations yield increases to



New York's 2012 and 2014 state budgets for annual SO<sub>2</sub> of 84 tons, annual NO<sub>x</sub> of 694 tons, and ozone-season NO<sub>x</sub> of 127 tons.

EPA is also finalizing an adjustment of 5,360 tons to New York's 2012 and 2014 SO<sub>2</sub> budgets based on its determination that the appropriate removal rate for two facilities, Dunkirk and Huntley, with existing dry sorbent injection (DSI). The removal rate for the DSI controls should be 53 percent. EPA had previously assumed an SO<sub>2</sub> removal rate of 70 percent for these two units, as 70% is the default value that EPA assumes for new DSI retrofits in IPM modeling. However, more recently reported EIA form 860 data released after the rule was finalized confirms the commenter's reporting that the removal rate is less than 70%. In the 2010 EIA 860 form, the sources reported 53% removal and EPA is updating its assumptions and budgets to reflect this value. This revised approach is consistent with EPA's assumptions of scrubber SO<sub>2</sub> removal rates, which EPA bases on reported values on EIA form 860. EPA recalculated the projected emissions for these units based on this revised assumption and is increasing the New York 2012 and 2014 SO<sub>2</sub> budgets accordingly.

- (11) Revise the Oklahoma ozone-season NO<sub>x</sub> budgets for 2013 and 2014.

EPA is increasing the Oklahoma 2013<sup>8</sup> and 2014 ozone-season NO<sub>x</sub> budgets by 859 tons.

EPA received comments received on the October 14, 2011, revisions proposal demonstrating that the Comanche plant is in an out-of-merit-order dispatch area with conditions likely to necessitate what would otherwise be non-economic generation. EPA determined there were immediate-term local conditions that would likely necessitate non-economic generation at these units. This action also revises the assumption of an FGD at the W S Lee Facility. Current emissions data reported to EPA's Air Markets Program Data (<http://ampd.epa.gov/ampd/>) did not suggest any existing FGD, and EPA could not find any new evidence to suggest that FGDs were planned, under construction, or expected to be online in 2012 or 2014 at this facility.

(12) Revise the Texas annual NO<sub>x</sub> and ozone season NO<sub>x</sub> budgets for 2012 and 2014.

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<sup>8</sup> These changes do not apply to the Oklahoma 2012 budget because similar changes were already made to the affected units' operation in 2012, as described in the Technical Support Document "Determination of State Budgets for the Final Ozone Supplemental of the Transport Rule" (EPA-HQ-OAR-2009-0491-485, pg 5-7).

In this final action, EPA is increasing the Texas 2012 and 2014 annual and ozone-season NO<sub>x</sub> budgets by 2,731 and 1,142 tons respectively.

These revisions are made to account for operational constraints at six plants: Jones, Moore County, Nichols, Plant X, Knox Lee, and Wilkes. These constraints were identified by commenters in response to the October 14, 2011, revisions proposal. The commenters provided information showing that these plants were in out-of-merit-order dispatch areas with conditions likely to necessitate what would otherwise be non-economic generation. EPA determined that there were immediate-term local conditions that would likely necessitate non-economic generation at these units.

EPA recalculated the emissions from these plants with non-economic generation to account for the input assumption changes. These calculations yield increases to the Texas 2012 and 2014 state budgets for annual NO<sub>x</sub> of 2,731 tons, and ozone-season NO<sub>x</sub> of 1,142 tons.

## VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action makes relatively minor revisions to the emission budgets and allowance allocations or allowance allocations only in certain states in the final Transport Rule and corrects minor technical errors which are ministerial. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the final Transport Rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0667. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that

the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this action are electric power generators whose ultimate parent entity has a total electric output of 4 million megawatt-hours (MWh) or less in the previous fiscal year. We have determined that the changes considered in this rulemaking pose no additional burden for small entities. The revision to the new unit set-asides in

Arkansas, Missouri, and Texas would yield an extremely small change in unit-level allowance allocations to existing units, including small entities, such that it would not affect the analysis conducted on small entity impacts under the finalized Transport Rule. In all other states, the revisions in this rulemaking would yield additional allowance allocations to all units, including small entities, without increasing program stringency, such that it is not possible for the impact to small entities to be any larger than that already considered and reviewed in the finalized Transport Rule.

#### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action is increasing the budgets and increasing the total number of allowances or maintaining the same budget but revising unit-level allocations in several other states in the Transport Rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

In developing the final Transport Rule, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts of regulatory

requirements in the rule that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action makes relatively minor revisions to the emissions budgets and allowance allocations or allowance allocations only in certain states in the final Transport Rule. Thus, Executive Order 13132 does not apply to this rule. EPA did provide information to state and local officials during development of both the proposed and final Transport Rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action makes relatively minor revisions to the emissions budgets and allowance allocations in several states in the final Transport Rule and helps ease the transition from CAIR. Indian country new unit set-asides will increase slightly or remain unchanged in the states

affected by this action. Thus, Executive Order 13175 does not apply to this action. EPA consulted with tribal officials during the process of promulgating the final Transport Rule to permit them to have meaningful and timely input into its development.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Analyses by EPA that show how the emission reductions from the strategies in the final Transport Rule will further improve air quality and children's health can be found in the final Transport Rule RIA.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act



Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

As described in section XII.I of the preamble to the final Transport Rule, the Transport Rule program requires all sources to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on

environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

In the "Final June Revisions Rule Significant Contribution Assessment TSD" in the docket to this rulemaking, EPA assessed impacts of the emission changes in this rule on air quality throughout the Transport Rule region. For SO<sub>2</sub>, the estimated air quality impacts were minimal and no additional nonattainment or maintenance areas were identified. EPA also assessed the relationship between the NO<sub>x</sub> emission inventories in each affected state and the finalized revisions to annual and ozone-season NO<sub>x</sub> budgets and found the revisions represent small percentages of each state's total emissions in 2014. As a result, EPA does not believe these technical revisions would affect any of the conclusions supported by the air quality and environmental justice analyses conducted for the final Transport Rule.

Based on the significant contribution assessment in the technical support document for this action, EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA believes that the vast majority of communities and individuals in areas covered by the Transport Rule program inclusive of this action, including numerous low-income, minority, and tribal individuals and communities in both rural areas and inner cities in the eastern and central U.S., will see significant improvements in air quality and resulting improvements in health. EPA's assessment of the effects of the final Transport Rule program on these communities is available in section XII.J of the preamble to the final Transport Rule.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal\_Register. This action is a not "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

L. Judicial Review

Petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and

publishes that such action is based on such a determination."

In the final Transport Rule, EPA determined that "[a]ny final action related to the Transport Rule is 'nationally applicable' within the meaning of section 307(b)(1)." 76 FR 48352. Through this rule, EPA is revising specific aspects of the final Transport Rule. This rule therefore is a final action related to the Transport Rule and as such is covered by the determination of national applicability made in the final Transport Rule. Thus, pursuant to section 307(b) any petitions for review of this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the Federal Register. Filing a petition for reconsideration of this action does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. In addition, pursuant to CAA section 307(b)(2) this action may not be challenged later in proceedings to enforce its requirements.

**List of Subjects in 40 CFR Part 97**

Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: June 5, 2012

Lisa P. Jackson  
Administrator.

For the reasons set forth in the preamble, title 40,  
chapter I of the Code of Federal Regulations is amended as  
follows:

**PART 97 [Amended]**

1. The authority citation for Part 97 continues to read as  
follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and  
7651, et seq.

**Subpart AAAAA [Amended]**

2. Section 97.410 is amended by:

- a. Revising paragraphs (a)(2)(iv) and (a)(2)(v);
- b. Revising paragraphs (a)(6), (a)(11), (a)(14), (a)(16), and (a)(20); and
- c. Revising paragraphs (b)(2), (b)(6), (b)(11), (b)(14), (b)(16) and (b)(20).

The revisions read as follows:

§97.410 State NO<sub>x</sub> Annual trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) \* \* \*

(2) \* \* \*

(iv) The NO<sub>x</sub> annual trading budget for 2014 and thereafter is 53,738 tons.

(v) The NO<sub>x</sub> annual new unit set-aside for 2014 and thereafter is 1,075 tons.

\* \* \* \* \*

(6) Kansas. (i) The NO<sub>x</sub> annual trading budget for 2012 and 2013 is 31,354 tons.

(ii) The NO<sub>x</sub> annual new unit set-aside for 2012 and 2013 is 596 tons.

(iii) The NO<sub>x</sub> annual Indian country new unit set-aside for 2012 and 2013 is 31 tons.

(iv) The NO<sub>x</sub> annual trading budget for 2014 and thereafter



is 31,354 tons.

(v) The NO<sub>x</sub> annual new unit set-aside for 2014 and thereafter is 596 tons.

(vi) The NO<sub>x</sub> annual Indian country new unit set-aside for 2014 and thereafter is 31 tons.

\* \* \* \* \*

(11) Missouri. (i) The NO<sub>x</sub> annual trading budget for 2012 and 2013 is 52,400 tons.

(ii) The NO<sub>x</sub> annual new unit set-aside for 2012 is 1,572 tons and for 2013 is 3,144 tons.

(iii) [Reserved]

(iv) The NO<sub>x</sub> annual trading budget for 2014 and thereafter is 48,743 tons.

(v) The NO<sub>x</sub> annual new unit set-aside for 2014 and thereafter is 2,925 tons.

\* \* \* \* \*

(14) New York. (i) The NO<sub>x</sub> annual trading budget for 2012 and 2013 is 21,722 tons.

(ii) The NO<sub>x</sub> annual new unit set-aside for 2012 and 2013 is 412 tons.

(iii) The NO<sub>x</sub> annual Indian country new unit set-aside for 2012 and 2013 is 22 tons.

(iv) The NO<sub>x</sub> annual trading budget for 2014 and thereafter is 21,722 tons.

(v) The NO<sub>x</sub> annual new unit set-aside for 2014 and thereafter is 412 tons.

(vi) The NO<sub>x</sub> annual Indian country new unit set-aside for 2014 and thereafter is 22 tons.

\* \* \* \* \*

(16) Ohio. (i) The NO<sub>x</sub> annual trading budget for 2012 and 2013 is 95,468 tons.

(ii) The NO<sub>x</sub> annual new unit set-aside for 2012 and 2013 is 1,909 tons.

(iii) [Reserved]

(iv) The NO<sub>x</sub> annual trading budget for 2014 and thereafter is 90,258 tons.

(v) The NO<sub>x</sub> annual new unit set-aside for 2014 and thereafter is 1,805 tons.

\* \* \* \* \*

(20) Texas. (i) The NO<sub>x</sub> annual trading budget for 2012 and 2013 is 137,701 tons.

(ii) The NO<sub>x</sub> annual new unit set-aside for 2012 and 2013 is 5,370 tons.

(iii) The NO<sub>x</sub> annual Indian country new unit set-aside for 2012 and 2013 is 138 tons.

(iv) The NO<sub>x</sub> annual trading budget for 2014 and thereafter is 137,701 tons.

(v) The NO<sub>x</sub> annual new unit set-aside for 2014 and

thereafter is 5,370 tons.

(vi) The NO<sub>x</sub> annual Indian country new unit set-aside for 2014 and thereafter is 138 tons.

\* \* \* \* \*

(b) \* \* \*

(2) The NO<sub>x</sub> annual variability limit for Georgia is 9,673 tons.

\* \* \* \* \*

(6) The NO<sub>x</sub> annual variability limit for Kansas is 5,644 tons.

\* \* \* \* \*

(11) The NO<sub>x</sub> annual variability limit for Missouri is 8,774 tons.

\* \* \* \* \*

(14) The NO<sub>x</sub> annual variability limit for New York is 3,910 tons.

\* \* \* \* \*

(16) The NO<sub>x</sub> annual variability limit for Ohio is 16,246 tons.

\* \* \* \* \*

(20) The NO<sub>x</sub> annual variability limit for Texas is 24,786 tons.

\* \* \* \* \*

**Subpart BBBBB [Amended]**

3. Section 97.510 is amended by:

- a. Revising paragraph (a) (2);
- b. Revising paragraphs (a) (4) (iv) and (a) (4) (v);
- c. Revising paragraphs (a) (9), (a) (12), (a) (13), (a) (15), (a) (17), (a) (18), and (a) (22); and
- d. Revising paragraphs (b) (2), (b) (4), (b) (9), (b) (12), (b) (13), (b) (15), (b) (17), (b) (18), and (b) (22).

The revisions read as follows:

§97.510 State NO<sub>x</sub> Ozone Season trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) \* \* \*

(2) Arkansas. (i) The NO<sub>x</sub> ozone season trading budget for 2012 and 2013 is 15,110 tons.

(ii) The NO<sub>x</sub> ozone season new unit set-aside for 2012 and 2013 is 756 tons.

(iii) [Reserved]

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 15,110 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 1,209 tons.

\* \* \* \* \*

(4) \* \* \*

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 24,041 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 481 tons.

\* \* \* \* \*

(9) Louisiana. (i) The NO<sub>x</sub> ozone season trading budget for 2012 and 2013 is 18,115 tons.

(ii) The NO<sub>x</sub> ozone season new unit set-aside for 2012 and 2013 is 344 tons.

(iii) The NO<sub>x</sub> ozone season Indian country new unit set-aside for 2012 and 2013 is 18 tons.

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 18,115 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 344 tons.

(vi) The NO<sub>x</sub> ozone season Indian country new unit set-aside for 2014 and thereafter is 18 tons.

\* \* \* \* \*

(12) Mississippi. (i) The NO<sub>x</sub> ozone season trading budget for 2012 and 2013 is 12,429 tons.

(ii) The NO<sub>x</sub> ozone season new unit set-aside for 2012 and

2013 is 237 tons.

(iii) The NO<sub>x</sub> ozone season Indian country new unit set-aside for 2012 and 2013 is 12 tons.

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 12,429 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 237 tons.

(vi) The NO<sub>x</sub> ozone season Indian country new unit set-aside for 2014 and thereafter is 12 tons.

(13) Missouri. (i) The NO<sub>x</sub> ozone season trading budget for 2012 and 2013 is 22,788 tons.

(ii) The NO<sub>x</sub> ozone season new unit set-aside for 2012 is 684 tons and for 2013 is 1,367 tons.

(iii) [Reserved]

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 21,099 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 1,266 tons.

\* \* \* \* \*

(15) New York. (i) The NO<sub>x</sub> ozone season trading budget for 2012 and 2013 is 10,369 tons.

(ii) The NO<sub>x</sub> ozone season new unit set-aside for 2012 and

2013 is 197 tons.

(iii) The NO<sub>x</sub> ozone season Indian country new unit set-aside for 2012 and 2013 is 10 tons.

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 10,369 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 197 tons.

(vi) The NO<sub>x</sub> ozone season Indian country new unit set-aside for 2014 and thereafter is 10 tons.

\* \* \* \* \*

(17) Ohio. (i) The NO<sub>x</sub> ozone season trading budget for 2012 and 2013 is 41,284 tons.

(ii) The NO<sub>x</sub> ozone season new unit set-aside for 2012 and 2013 is 826 tons.

(iii) [Reserved]

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 39,013 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 780 tons.

(18) Oklahoma. (i) The NO<sub>x</sub> ozone season trading budget for 2012 is 36,567 tons and for 2013 is 22,694 tons.

(ii) The NO<sub>x</sub> ozone season new unit set-aside for 2012 is 731 tons and for 2013 is 454 tons.

(iii) [Reserved]

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 22,694 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 454 tons.

\* \* \* \* \*

(22) Texas. (i) The NO<sub>x</sub> ozone season trading budget for 2012 and 2013 is 65,560 tons.

(ii) The NO<sub>x</sub> ozone season new unit set-aside for 2012 and 2013 is 2,556 tons.

(iii) The NO<sub>x</sub> ozone season Indian country new unit set-aside for 2012 and 2013 is 66 tons.

(iv) The NO<sub>x</sub> ozone season trading budget for 2014 and thereafter is 65,560 tons.

(v) The NO<sub>x</sub> ozone season new unit set-aside for 2014 and thereafter is 2,556 tons.

(vi) The NO<sub>x</sub> ozone season Indian country new unit set-aside for 2014 and thereafter is 66 tons.

\* \* \* \* \*

(b) \* \* \*

(2) The NO<sub>x</sub> ozone season variability limit for Arkansas is 3,173 tons.



\* \* \* \* \*

(4) The NO<sub>x</sub> ozone season variability limit for Georgia is 5,049 tons.

\* \* \* \* \*

(9) The NO<sub>x</sub> ozone season variability limit for Louisiana is 3,804 tons.

\* \* \* \* \*

(12) The NO<sub>x</sub> ozone season variability limit for Mississippi is 2,610 tons.

(13) The NO<sub>x</sub> ozone season variability limit for Missouri is 4,431 tons.

\* \* \* \* \*

(15) The NO<sub>x</sub> ozone season variability limit for New York is 2,177 tons.

\* \* \* \* \*

(17) The NO<sub>x</sub> ozone season variability limit for Ohio is 8,193 tons.

(18) The NO<sub>x</sub> ozone season variability limit for Oklahoma is 4,766 tons.

\* \* \* \* \*

(22) The NO<sub>x</sub> ozone season variability limit for Texas is 13,768 tons.

\* \* \* \* \*

**Subpart CCCCC [Amended]**

4. Section 97.610 is amended by revising:

- a. Paragraph (a) (2);
- b. Paragraphs (a) (7) (ii) and (a) (7) (v);
- c. Paragraphs (a) (9) and (a) (11); and
- d. Paragraphs (b) (2), (b) (9), and (b) (11).

The revisions read as follows:

§97.610 State SO<sub>2</sub> Group 1 trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) \* \* \*

(2) Indiana. (i) The SO<sub>2</sub> trading budget for 2012 and 2013 is 290,762 tons.

(ii) The SO<sub>2</sub> new unit set-aside for 2012 and 2013 is 8,723 tons.

(iii) [Reserved]

(iv) The SO<sub>2</sub> trading budget for 2014 and thereafter is 166,449 tons.

(v) The SO<sub>2</sub> new unit set-aside for 2014 and thereafter is 4,993 tons.

\* \* \* \* \*

(7) \* \* \*

(ii) The SO<sub>2</sub> new unit set-aside for 2012 is 4,149 tons and for 2013 is 6,224 tons.

\* \* \* \* \*

(v) The SO<sub>2</sub> new unit set-aside for 2014 and thereafter is 4,978 tons.

\* \* \* \* \*

(9) New York. (i) The SO<sub>2</sub> trading budget for 2012 and 2013 is 36,296 tons.

(ii) The SO<sub>2</sub> new unit set-aside for 2012 and 2013 is 690 tons.

(iii) The SO<sub>2</sub> Indian country new unit set-aside for 2012 and 2013 is 36 tons.

(iv) The SO<sub>2</sub> trading budget for 2014 and thereafter is 27,556 tons.

(v) The SO<sub>2</sub> new unit set-aside for 2014 and thereafter is 523 tons.

(vi) The SO<sub>2</sub> Indian country new unit set-aside for 2014 and thereafter is 28 tons.

\* \* \* \* \*

(11) Ohio. (i) The SO<sub>2</sub> trading budget for 2012 and 2013 is 315,393 tons.

(ii) The SO<sub>2</sub> new unit set-aside for 2012 and 2013 is 6,308 tons.

(iii) [Reserved]

(iv) The SO<sub>2</sub> trading budget for 2014 and thereafter is 142,240 tons.

(v) The SO<sub>2</sub> new unit set-aside for 2014 and thereafter is

2,845 tons.

\* \* \* \* \*

(b) \* \* \*

(2) The SO<sub>2</sub> variability limit for Indiana is 29,961 tons.

\* \* \* \* \*

(9) The SO<sub>2</sub> variability limit for New York is 4,960 tons.

\* \* \* \* \*

(11) The SO<sub>2</sub> variability limit for Ohio is 25,603 tons.

\* \* \* \* \*

**Subpart DDDDD [Amended]**

5. Section 97.710 is amended by:

- a. Revising paragraphs (a)(2)(iv) and (a)(2)(v);
- b. Revising paragraphs (a)(3), (a)(5), and (a)(6); and
- c. Revising paragraphs (b)(2), (b)(3), (b)(5) and (b)(6).

The revisions read as follows:

§97.710 State SO<sub>2</sub> Group 2 trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) \* \* \*

(2) \* \* \*

(iv) The SO<sub>2</sub> trading budget for 2014 and thereafter is 135,565 tons.

(v) The SO<sub>2</sub> new unit set-aside for 2014 and thereafter is 2,711 tons.

\* \* \* \* \*

(3) Kansas. (i) The SO<sub>2</sub> trading budget for 2012 and 2013 is 41,980 tons.

(ii) The SO<sub>2</sub> new unit set-aside for 2012 and 2013 is 798 tons.

(iii) The SO<sub>2</sub> Indian country new unit set-aside for 2012 and 2013 is 42 tons.

(iv) The SO<sub>2</sub> trading budget for 2014 and thereafter is 41,980 tons.

(v) The SO<sub>2</sub> new unit set-aside for 2014 and thereafter is 798 tons.

(vi) The SO<sub>2</sub> Indian country new unit set-aside for 2014 and thereafter is 42 tons.

\* \* \* \* \*

(5) Nebraska. (i) The SO<sub>2</sub> trading budget for 2012 and 2013 is 68,162 tons.

(ii) The SO<sub>2</sub> new unit set-aside for 2012 and 2013 is 2,658 tons.

(iii) The SO<sub>2</sub> Indian country new unit set-aside for 2012 and 2013 is 68 tons.

(iv) The SO<sub>2</sub> trading budget for 2014 and thereafter is 68,162 tons.

(v) The SO<sub>2</sub> new unit set-aside for 2014 and thereafter is 2,658 tons.

(vi) The SO<sub>2</sub> Indian country new unit set-aside for 2014 and thereafter is 68 tons.

(6) South Carolina. (i) The SO<sub>2</sub> trading budget for 2012 and 2013 is 96,633 tons.

(ii) The SO<sub>2</sub> new unit set-aside for 2012 and 2013 is 1,836 tons.

(iii) The SO<sub>2</sub> Indian country new unit set-aside for 2012 and 2013 is 97 tons.

(iv) The SO<sub>2</sub> trading budget for 2014 and thereafter is 96,633 tons.

(v) The SO<sub>2</sub> new unit set-aside for 2014 and thereafter is 1,836 tons.

(vi) The SO<sub>2</sub> Indian country new unit set-aside for 2014 and thereafter is 97 tons.

\* \* \* \* \*

(b) \* \* \*

(2) The SO<sub>2</sub> variability limit for Georgia is 24,402 tons.

(3) The SO<sub>2</sub> variability limit for Kansas is 7,556 tons.

\* \* \* \* \*

(5) The SO<sub>2</sub> variability limit for Nebraska is 12,269 tons.

(6) The SO<sub>2</sub> variability limit for South Carolina is 17,394 tons.

\* \* \* \* \*

[FR Doc. 2012-14251 Filed 06/11/2012 at 8:45 am;

Publication Date: 06/12/2012]